

Proway GmbH General Business Terms and Conditions (Version dated 09.03.2018)

1. Scope of Application

1.1 Proway shall furnish goods, services and offers solely on the basis of these General Business Terms and Conditions, unless they are expressly changed or excluded. Any different agreements shall only be valid if we have confirmed them in writing.
1.2 Unless otherwise expressly stipulated in an individual case, the following provisions shall only apply to customers who are entrepreneurs within the meaning of § 14 of the German Civil Code (BGB).

2. Offers and Delivery Items

2.1 Our offers shall be non-binding and without obligation. They shall only represent information for customers. A contract shall only come about when we send written confirmation to the customer.
2.2 The customer shall be bound by his order for a period of four weeks. We shall be entitled to accept the contract offer contained in the order within this period after receipt by us.
2.3 The contract shall be concluded subject to correct and timely self-delivery by our supplier. This provision shall only apply if we are not responsible for non-delivery. The customer shall be informed immediately about the non-availability of performance.
2.4 Modifications to the technical design of the ordered goods and services shall be permitted, unless they lead to a substantial change in their function or the customer proves that the modification is unacceptable to him.
2.5 Proway shall not be obliged to combine its supplied goods and services with other devices or programs of the customer during setup and implementation of operational readiness. This shall be regarded as an additional service subject to a charge.
2.6 The products and systems which we produce or supply shall only be intended for end customers in those countries which comply with the Export Control Regulations of the German Federal Office of Economics. Unless expressly stipulated in the Delivery Terms, every re-export to third countries without an export licence from the German Federal Office of Economics and/or every officially unauthorised use or exploitation of goods supplied by us shall not be permitted and shall oblige the customer to pay compensation to Proway.
2.7 We shall retain copyright to all drafts, offers, concepts and drawings produced by our company. They shall not be made accessible to third parties.

3. Delivery Period, Default and Impossibility

3.1 Unless otherwise expressly agreed in writing, deadlines and delivery periods shall be non-binding. Stipulation of specific delivery periods and delivery dates by our company shall be subject to correct and timely delivery of goods or services to Proway by suppliers and manufacturers. Compensation claims for exceeding non-binding delivery periods shall be excluded.
3.2 If the customer is obliged to fulfil contractual obligations before the due delivery date, especially to make payment in advance, the delivery period shall not commence until full payment has been made to our account. Every delivery period shall commence on the date of receipt of our order confirmation by the contracting party, but not before fulfilment of the cooperation obligations of the customer.
3.3 In the event of a problem which is not our responsibility and is notified by us as soon as possible, the delivery period shall be suitably extended at least by the duration of the hindrance to performance. In particular, we shall not be responsible for all cases of force majeure and breakdowns, industrial disputes, transport disruptions, official measures and instructions, including the non-issue of necessary export licences or other permits from the respective countries, etc., unless these problems are due to more than slight negligence on the part of Proway or its agents. In the event of cases of force majeure or other problems which occur after the conclusion of the contract, are not the responsibility of Proway and delay delivery for an unforeseeable period, they shall release both contracting parties from their performance obligations following written notification by us regarding the nature and contents of these circumstances.
3.4 The delivery period shall be deemed to have been observed if the delivery item has left the premises of Proway before the end of the delivery period or notification of readiness for dispatch or delivery has been sent.
3.5 In the event of non-compliance with a binding performance period or delivery period/binding performance date or delivery date, compensation claims by the customer shall be excluded if the delay is due to slight negligence on our part. In the event of medium or gross negligence, claims for reimbursement of damage due to delay and our liability for unforeseeable damage at the time of conclusion of the contract or the performance of the harmful action shall be excluded. The contracting party's right to withdraw from the contract after the unsuccessful end of an appropriate period of grace shall not be affected. A period of grace of at least 20 working days shall be regarded as appropriate.
3.6 We shall be entitled, in principle, to make partial deliveries.
3.7 As long as and insofar as the customer is in default with the fulfilment of his contractual obligations, especially the payment obligation, we shall be entitled to make the supply of goods and services, as well as the conclusion of other contracts dependent on the provision of standard bank securities.

4. Prices and Payment

4.1 If a valid contract is concluded, Proway shall be bound by the agreed price for goods or services which are to be supplied or furnished within one month after the date of conclusion of the contract. After the end of the month following the above-mentioned effective date, Proway shall be entitled to increase the prices by a reasonable extent up to the list prices valid on the date of provision of the services. In the case of delivery periods of more than one month, we shall also be entitled to increase the prices by a reasonable extent up to the list prices valid on the date of provision of the services. This provision shall not apply if a fixed price has been expressly agreed.
4.2 Unless otherwise agreed, the prices shall be regarded as ex Proway works plus VAT. If our suppliers change their prices, we shall reserve the right to adjust our sales prices accordingly.
4.3 Unless otherwise agreed, all invoices shall be paid within 15 days without deductions. The customer shall be in payment arrears at the latest after 30 days from the receipt of the goods/services without the need for a warning. The statutory default regulations shall also apply.
4.4 Payment shall only be deemed to have been made when Proway can freely dispose of the amount. If the customer does not pay on time, we shall be entitled to charge default interest amounting to 8% above the prevailing base interest rate of the German Federal Bank. We shall reserve the right to enforce any other claims for damage caused by delay.
4.5 Proway shall be entitled to demand immediate payment of the entire balance if the customer culpably fails to comply with his payment obligations and gets into arrears, or stops making payments, if an application is made to open insolvency proceedings against his assets or if the customer has made an affirmation in lieu of an oath in accordance with § 807 of the German Code of Civil Procedure (ZPO). Proway shall be entitled in these cases to demand advance payments or securities.
4.6 The customer shall only have a right of offsetting if his counterclaims are final and absolute or have been accepted by us. The customer may only exercise a right of retention if his counterclaim is based on the same contract.
4.7 Acceptance of a bill of exchange shall require a special agreement. Cheques, bills of exchange and other securities shall only ever be accepted subject to their payment, their possibility of discounting and assumption by the customer of all costs in connection with payment. These costs shall always be paid in cash. We shall accept no liability for prompt presentation of bills of exchange or cheques, or for timely filing of protest.

5. Warranty and Liability

5.1 We shall furnish no warranty whatsoever for defects caused by improper handling. If the customer or third parties whom we have not authorised make changes to the products, our liability for defects and warranted properties shall not apply, unless the customer proves that the changes did not cause the defects and do not make it extremely difficult to properly rectify the defects.
5.2 The customer shall examine incoming goods and services - as soon as they are received - for completeness, quality defects or the absence of properties assured by Proway. Proway shall be informed in writing about obvious defects as soon as the goods have been received. Hidden defects shall be notified to Proway in writing within one week after their discovery. In order to analyse problems and determine defects, the customer shall follow the instructions of Proway within reasonable bounds. No warranty shall be assumed for quantity errors or defects which are not notified promptly.
5.3 Proway shall be entitled to fulfil warranty claims asserted against it either by carrying out repairs or replacing defective parts. Prior to replacement, the customer shall remove programs (including his user programs), data, data carriers and changes to the extent required in this respect. The customer shall grant Proway the required time at reasonable discretion and the opportunity to carry out rework. A period of at least 20 working days shall be regarded as reasonable in this case. Any further warranty claims shall only accrue to the customer if the provisions of § 5.4 apply.
5.4 If rework or a subsequent delivery fails after a reasonable period of time, the customer may either request a reduction in the purchase price or cancellation of the contract.
5.5 Any further warranty claims, especially compensation claims, shall be excluded, unless they are due to intent or gross or medium negligence on the part of Proway or its agents.
5.6 In particular, Proway shall not be liable for consequential damage caused by defective goods and services. This provision shall not apply to compensation claims resulting from warranted properties, which are intended to cover the customer against the risk of consequential damage caused by defects; or to compensation claims which are enforced in accordance with the Product Liability Act. A warranted property shall only exist if Proway explicitly designates it as "warranted".
5.7 The following principle shall normally apply to compensation claims asserted by the customer: Proway shall have no liability whatsoever for slightly negligent infringements of obligations. Proway's liability to customers who are consumers within the meaning of § 13 of the German Civil Code (BGB) shall be limited to foreseeable, contract-typical, direct average damage for the type of goods or services. This provision shall also apply to slightly negligent infringements of obligations by our legal representatives or agents.
5.8 In the case of an infringement involving the export of goods subject to a licence, which may lead to compensation claims by third parties or to other official claims against Proway, warranty and liability claims by the customer shall be excluded.
5.9 If the customer himself acts as a manufacturer within the meaning of the Product Liability Act, he shall have sole product liability internally. The customer shall release Proway internally from product liability claims and all associated costs.

6. Industrial Property Rights

6.1 The customer shall immediately inform Proway in writing if claims are enforced against him due to an infringement of industrial property rights or an infringement of industrial property rights becomes known to him. Proway shall reserve the right to take suitable countermeasures and conduct settlement negotiations.
6.2 Proway shall release the customer from claims by third parties resulting from any infringements of copyright, trademarks or patents, unless the design of a delivery item originated from the customer.
Other preconditions for release shall be that the industrial property rights were infringed by Proway, that we are given the task of conducting legal disputes and that the notified rights infringement is due solely to Proway's design without any combination or use with other products.
6.3 If contractual use is impaired by industrial property rights of third parties, Proway shall be entitled - to an extent which is reasonable for the customer - to either purchase licences at its own expense or change the supplied goods or replace all or some of the supplied goods.
6.4 As soon as the customer realises that third parties are infringing Proway's industrial property rights in regard to the goods supplied to the customer, he shall inform Proway immediately.

7. Maintenance of Secrecy

7.1 Proway and the customer shall be obliged to maintain secrecy for an unlimited period of time regarding all information which becomes known to them in connection with deliveries by Proway or in another way on account of the business relationship, and which are plainly recognisable as business secrets or company secrets of Proway or the customer and must be treated confidentially. Unless this information is not required to attain the purpose of the contract, it shall not be recorded nor passed on to third parties nor used in any other way.
7.2 Proway shall give an undertaking not to disclose in any way whatsoever passwords, data and processes which it acquires through work, unless it has received written permission from the customer to pass on these data to fulfil the order.

8. Data Backup

8.1 The customer shall be solely responsible for ensuring that his programs and data are properly backed up and for checking them in regard to their functionality. Proway shall not be liable for damage which is caused by the fact that the customer did not carry out any adequate or complete data backup measures.

9. Applicable Law, Place of Jurisdiction

9.1 German law shall apply to these General Business and Delivery Terms and Conditions, as well as to all legal relations between Proway and the customer. Application of the Uniform Law on the International Sale of Goods (EKG) the Uniform Law on the Formation of Contracts for the International Sale of Goods (EAG) and the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.
9.2 The place of performance for goods and services from Proway and for payments by the customer shall be Ulm-Blaustein.
9.3 If the customer is a merchant, a legal person under public law or a special asset governed by public law, the sole place of jurisdiction for disputes arising directly or indirectly from the contract shall be Ulm. The same place of jurisdiction shall apply if the customer has no general place of jurisdiction in Germany, has changed his place of residence or normal abode in Germany after conclusion of the contract, or his place of residence or normal abode in Germany is not known when a lawsuit is commenced. However, Proway shall be entitled to also take legal action at the place where the customer has his place of business.
9.4 If Proway supplies goods to the customer for the purpose of export to other countries or the customer wants to export goods that are delivered to him and are not intended for export, the customer shall be obliged to obtain any necessary export licences and comply, if necessary, with the Export Control Regulations, especially according to the Foreign Trade and Payments Act and the COCOM List. The customer shall inform Proway about the intended export of goods prior to their export and shall send a copy of both the export licence and the end use certificate. The customer shall be obliged to conclude with his customers an agreement in line with the above provisions, if the customer is not issued with a due export licence. Proway shall be entitled to withdraw from the contract. Any costs arising from the contract or withdrawal from the contract shall be paid by the customer.

10. Saving Clause

If individual clauses of these General Business Terms and Conditions are or become invalid, this shall not affect the validity of the contract. The invalid clause shall be replaced in this case by a clause which comes as close as possible in legal terms to the intended economic purpose.